BANGUNAN NG LEONG SING SDN BHD

v.

PENTADBIR TANAH DAERAH WILAYAH PERSEKUTUAN, KUALA LUMPUR

FEDERAL COURT, PUTRAJAYA
ABDUL MALEK AHMAD PCA
PAJAN SINGH GILL FCJ
ALAUDDIN MOHD SHERIFF FCJ
[CIVIL APPEAL NO: 01-19-2004(W)]
29 JULY 2005

LAND LAW: *Acquisition of land - Compensation - Adequacy of - Assessment of comparables - Adjustment for size by trial judge - Whether flawed - Whether award to be revised - Appropriate quantum*

The learned judge in this case, in assessing the compensation to be awarded to the appellant in respect of the acquisition of its land ('the subject land') on 10 May 1990, took into account inter alia two comparables. Both comparables were bigger in size than the subject land and were sold in July 1990 for RM420.75 per sq foot and in March 1990 for RM380 per sq foot respectively. The learned judge then made allowances for the differences in size and timing of sale between the subject land and the comparables, and consequently awarded RM350 per sq foot as compensation for the subject land. Being dissatisfied, the appellant appealed and argued that the learned judge had erred in assessing the comparables and making the allowances in question, and further that, on the facts and in the circumstances, it deserved a compensation of RM399 per sq foot, *ie*, 5% higher than the price of the second comparable herein.

Held (allowing the appeal)
Per Abdul Malek Ahmad PCA delivering the judgment of the court:

[1] The learned High Court judge had accepted that a smaller land attracts a higher value than a larger land – relying on *Ng Tiou Hong v. Collector of Land Revenue, Gombak* where this court held that the big area of the land, its location and nature did not render it as marketable as the smaller lots in the neighbourhood. (p 260 d)

[2] The learned judge had fallen into error in making adjustments for size, and since learned counsel for the appellant had conceded to RM399 per square foot, which was based on five percent above the price of RM380 per sq foot paid for the second comparable, that was a fair amount in the circumstances. Hence, the award of RM350 per sq foot was increased to RM399 per sq foot. (p 263 e-f)

*[**Bahasa Malaysia** Translation Of Headnotes*

Yang arif hakim dalam kes ini, sewaktu membuat penilaian berkaitan pampasan yang harus dibayar kepada perayu atas pengambilan tanah perayu pada 10 Mei 1990, antara lain telah mengambil dua perbandingan untuk pertimbangannya. Kedua-dua tanah perbandingan mempunyai keluasan yang lebih besar dari tanah yang diambil, dan dijual masing-masingnya pada bulan Julai 1990 dengan harga RM420.75 se kaki persegi dan pada bulan Mac 1990 dengan harga RM380 se kaki persegi. Yang arif hakim kemudian membuat beberapa penyesuaian ekoran dari perbezaan saiz dan masa penjualan di antara tanah yang diambil dengan tanah perbandingan, dan berikutnya mengaward RM350 se kaki persegi sebagai pampasan untuk tanah yang diambil. Merasa tidak puas hati, perayu merayu dan berhujah bahawa yang arif hakim telah khilaf dalam menilai tanah perbandingan serta dalam membuat penyesuaian-penyesuaian yang berkenaan, dan bahawa, berdasarkan fakta dan halkeadaan kes, ia berhak kepada pampasan sebanyak RM399 se kaki persegi, iaitu 5% lebih tinggi dari harga perbandingan kedua di sini.

Diputuskan (membenarkan rayuan)
Oleh Abdul Malek Ahmad PMR menyampaikan penghakiman mahkamah:

[1] Yang arif hakim Mahkamah Tinggi telah menerima bahawa tanah yang lebih kecil mampu menarik harga yang lebih tinggi berbanding tanah yang lebih luas – dengan bersandar kepada *Ng Tiou Hong v. Collector of Land Revenue, Gombak* di mana mahkamah ini memutuskan bahawa kawasan tanah yang lebih luas, serta lokasi dan keadaan tanah tidak menjadikannya senang dijual seperti tanah-tanah disekitar yang lebih kecil keluasannya.

[2] Kami bersetuju sepenuhnya bahawa yang arif hakim telah khilaf apabila membuat penyesuaian mengenai saiz tanah dan oleh kerana yang arif peguam perayu telah menerima RM399 se kaki persegi, yang didasarkan kepada 5% lebih tinggi dari RM380 se kaki persegi yang dibayar untuk perbandingan kedua, kami berpendapat ia adalah jumlah yang adil dalam keadaan kes. Oleh yang demikian, award RM350 se kaki persegi adalah dinaikkan kepada RM399 se kaki persegi.

Case(s) referred to:

Hjh Halimah Hussain & Anor v. Collector of Land Revenue, Kuantan [1981] 2 MLJ 12 ***(refd)***

Ng Tiou Hong v. Collector of Land Revenue, Gombak [1984] 2 MLJ 35 ***(refd)***

For the appellant - Ajit Kumar Hastir; M/s Watson Peters & Mohd Fuad
For the respondent - Mohd Zaki Md Yasin SFC

[Appeal from High Court, Kuala Lumpur; Case No: S5-15-05-1993]

Reported by WA Sharif

JUDGMENT

Abdul Malek Ahmad PCA:

The subject property comprises three contiguous lots namely Lots 143, 144 and 146 Mukim Bandar Kuala Lumpur of limited commercial land with a total area of about 29,921.6 square feet with direct frontage onto Jalan Ampang about one hundred metres west of the junction at Jalan P. Ramlee and Jalan Yap Kwan Seng. The compulsory acquisition was gazetted on 10 May 1990 for the purpose of the renovation and extension of the Bank Simpanan Nasional headquarters. The subject property is located in the Golden Triangle where skyscrapers abound either as condominiums, offices, hotels or banks.

Although the appellant contended that the market value was RM480 per square foot, the respondent only awarded RM300 per square foot. The High Court increased the award to RM350 per square foot on 3 May 1996. Hence this appeal.

The appellant had four comparables while the respondent had seven. The learned High Court Judge found that only two of the appellant's four comparables and only one of the respondent's seven comparables could be considered as the others were not appropriate.

In his outline submissions, learned counsel for the appellant referred to two of his four comparables which were along Jalan Ampang. These were the two comparables considered by the learned High Court Judge. The first was Lots 43, 44, 45 and 46 of s. 44 which was sold for RM420.75 per square foot on 6 July 1990 and the second was Lots 43, 44, 133 and 135 of s. 58 sold for RM380 per square foot on 20 March 1990, according to the private valuer, but 3 November 1989 according to the government valuer. The latter was the common comparable.

Learned counsel submitted that the trial High Court Judge erred when he allowed only five per cent over the price of RM380 per square foot in favour of the subject property for increase in value for the time factor, using the sale dates for the two comparables in computing the monthly rate of increase, in view of the difference in the sale date of the second comparable between the two valuers. We found this difference to be of no consequence as it was only four months apart.

Employing the method of dividing the differences in price by the number of months between the sale dates, the rate of increase per month would be RM5 per month, the result of RM40 divided by eight months. Given that the difference in time between the sale date of the second comparable and the acquisition date is slightly more than six months, the figure in favour of the subject property would be RM30 per month over the RM350 for the second comparable making it closer to ten per cent than five per cent.

Learned counsel also pointed out that the learned High Court Judge accepted that a smaller land attracts a higher value than a larger land relying on *Ng Tiou Hong v. Collector of Land Revenue, Gombak* [1984] 2 MLJ 35 where this court held that the big area of the land, its location and nature do not render it marketable as would the smaller lots in the neighbourhood.

The manner the learned High Court Judge assessed the comparables was strongly attacked by learned counsel for the appellant. Considering that the subject property was only 29,921.6 square feet compared to the first comparable's 101,004.75 square feet and the second comparable's 142,114.5 square feet, learned counsel argued that the learned High Court Judge arbitrarily arrived at the figure of five per cent for size in favour of the subject property when comparing it with the second comparable when the percentage ought to be higher, in fact as high as twenty per cent. He reiterated that the learned High Court Judge ought to have first ascertained the adjustment for size with regard to the first comparable in relation to the second comparable.

He grounded his submissions as regards the higher percentage from the observations made by the learned High Court Judge in his judgment and from the information available in the record of appeal in particular:

(a) the learned High Court Judge attributed the price difference of RM40 per square foot between the first and second comparables to the issue of time only;

(b) the first comparable is about 30 per cent smaller than the second comparable;

(c) the price for the first comparable was RM420 per square foot. The price for the second comparable was RM380 per square foot;

(d) the learned High Court Judge noted that the first comparable had planning approval with a higher plot ratio than the subject property which also had planning approval. The learned High Court Judge deducted 15 per cent off the price of the first comparable with regard to the subject property. As the second comparable did not even have an application for planning approval, it would mean that if it could still attract a sale price of RM380 per square foot, the necessary adjustment in favour of the first comparable, if it had not yet been sold, would have been at least 15 per cent over RM380 per square foot, hence taking the price to RM437 per square foot;

(e) the learned High Court Judge deducted 15 per cent for location of the subject property when comparing with the location of the second comparable which was within the Golden Triangle. Given that the first comparable is located even further, a slightly higher deduction of 20 per cent from the price of RM380 per square foot would give a figure of RM304 per square foot;

(f) when the sum of RM40 per square foot for time as given by the learned High Court Judge is added to the figure of RM304 per square foot, it would put the figure at RM344 per square foot. However, it is known that the first comparable was sold at RM420 per square foot. Hence, the remaining difference of RM76 per square foot can only be attributed to size. This figure of RM76 is equal to 20 per cent of the sale price of RM380 per square foot for the second comparable;

(g) hence, the learned High Court Judge erred when he held that the 20 per cent as stated by the appellant's valuer to be excessive since the increase for reason of favourable size cannot therefore be less than 20 per cent in any case given that the subject property is not bigger than the first comparable.

The learned High Court Judge, he added, when comparing the subject property with the first comparable, deducted 15 per cent off the price of RM420 per square foot for the first comparable on the ground that the first comparable was approved for a higher plot ratio than the subject property. It was respectfully submitted that the learned High Court Judge erred on this point because whilst the approved plot ratio for the first comparable was 5.27, the plot ratio of 4.07 for the subject property was when the approval was for a 14 storeyed building only. The approval for the subject property was later revised and approved for a 17 storeyed building. Hence, the learned counsel for the appellant argued that the deduction of 15 per cent is inaccurate and ought to have been much lower.

The appellant's valuer had allowed a figure of 15 per cent in favour of the second comparable because it is better located being on the side of Jalan Ampang which coincides with what is commonly known as the Golden Triangle. This has been accepted by the learned High Court Judge.

Learned counsel for the appellant further submitted that the learned High Court Judge was correct in adding 10 per cent to the price of RM380 per square foot in favour of the subject property since the subject property already had planning approval whereas the second comparable did not.

Based on the foregoing, he said, there is a total of 25 per cent over the price of RM380 per square foot for the second comparable in favour of the subject property, that is to say, 10 per cent for time, 10 per cent for planning and 20 per cent for size all in favour of the subject property less 15 per cent for location against the subject property. This would place the value of the subject land at RM475 per square foot. However, before us, learned counsel conceded that the award should be five per cent higher than the RM380, namely RM399 per square foot.

The learned senior federal counsel for the respondent replied that the learned High Court Judge had adopted the normal considerations for land acquisition cases for market value with the usual adjustments based on his experience and knowledge relying on *Hajjah Halimah binte Hussain & Anor. v. Collector of Land Revenue, Kuantan* [1981] 2 MLJ 12 where at p. 15 it is stated:

> The issue before the learned judge was, what was the value of the land at the material date which was May 24, 1973? Value must mean market value, which in turn means the price which a willing seller, not obliged to sell, might reasonably expect from a willing purchaser with whom he was bargaining for sale and purchase of the land (*Nanyang Manufacturing Co. v. C.L.R. Johore* [1954] MLJ 69. It is plain from the notes of evidence and submissions and from the judgment that everybody was aware that the best way of determining this amount is by looking at sales of comparable lands in the vicinity at or about the material date.
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> What are the questions before us? The questions before an appellate court are usually different from those before a court of first instance. A court of first instance generally speaking is looking for truth, whereas an appellate court is looking for error.
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> In the case of an appeal against the alleged inadequacy of the value put on land by a trial judge, the questions before us, as explained in *Collector of Stamp Duties v. Ng Fah In & Ors* [1981] 1 MLJ 288, heard in the same week as this one are: in determining the value, has the learned judge acted on a wrong principle, or misapprehended the facts, or has he for some reason made a wholly

erroneous estimate of the value of the land? It is not enough if only there is a balance of opinion or preference one way or another: the scale must go down heavily on the ground of insufficiency against the allegedly low value put on the land by the learned judge.

We should be reluctant to interfere with the learned judge's award – because he lives in Kuantan not far from the land, and because out of respect for his local knowledge and experience.

However, he conceded that the learned High Court Judge had contradicted himself for downward adjustment for size. He reminded the court of the pipeline encumbrance under the subject property which would cause the value to go down five per cent leaving us with the same amount as decided by the learned High Court Judge. He stressed that we should not be concerned with mathematical calculations. The swift reply from learned counsel for the appellant was that the pipeline could not be removed.

We have looked at the affidavits and the valuation reports and have considered the arguments and the authorities. We took note that the pipeline had been constructed in the early part of the twentieth century and, being in fact one of the oldest water pipelines in the country still supplying water, it has never been and cannot be regarded as an encumbrance.

We fully agree that the learned High Court Judge had fallen into error when making adjustments for size and since learned counsel for the appellant had conceded before us to RM399 per square foot, which is based on five per cent above RM380 per square foot which was awarded for the second comparable, we feel that this is a fair amount in these circumstances.

The appeal is accordingly allowed with costs. The award of RM350 per square foot is increased to RM399 per square foot. The deposit is refunded to the appellant.